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# If at First You Don't Accede: Turkish Accession to the European Union

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## IF AT FIRST YOU DON'T ACCEDE: TURKISH ACCESSION TO THE EUROPEAN UNION

*Chris Henry\**

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### I. INTRODUCTION

Turkey's bid for full membership in the European Union (EU) has been a major source of controversy for the international community.<sup>1</sup> The possibility of Turkish accession has fueled discussion about the changing character of the EU and the potentially far-reaching economic consequences of allowing additional member states.<sup>2</sup> International proponents of Turkish accession cite to Turkey as being a key to regional power,<sup>3</sup> while Turkish proponents cite Turkey's

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<sup>1</sup> *Turkey's Quest for EU Membership*, EU Briefings 1 (Mar. 2008), available at <http://europe.unc.edu/wp-content/uploads/2013/08/Brief4-0803-turkeys-quest.pdf>.

<sup>2</sup> Anna Williams, *Has the Moment for Turkish Accession Passed?*, European Union Center Policy Brief, 4 (Summer 2014).

<sup>3</sup> Bruce Kuniholm, *Turkey's Accession to the European Union: Differences in European and US Attitudes, and Challenges for Turkey*, 2 *Turkish Studies* 1, 25, 34 (2001).

European heritage and the potential economic advantages of accession.<sup>4</sup> International opponents reference broad cultural differences between Turkey and Western Europe<sup>5</sup> and the ongoing Turkey-Cyprus conflict.<sup>6</sup> Turkish opponents to accession mention how poorly the process has been handled thus far.<sup>7</sup> Turkish accession would potentially have policy consequences worldwide,<sup>8</sup> and now that President Erdoğan has made significant attempts to consolidate power<sup>9</sup> the question of Turkish accession to the EU has never been more relevant.

Section II of this paper will provide a brief history of the relationship between Turkey and the EU to illustrate the conflict's evolution. Section III will discuss Turkish relations with several important international players: first, the relationship between Turkey and Germany, because Germany has been a major source of continued opposition to Turkey's accession; then the continued Turkish-Cyprus conflict, one of Turkey's greatest barriers to membership; and finally, how the United States views Turkey's bid to join the EU, as the United States' political perspectives present a stark contrast to the views of most of the EU member states. Section IV will examine the state of civil rights in Turkey in the context of the Turkish Constitution, which will illustrate "problem areas" for the government that will need to be addressed if Turkey wants to be seriously considered for accession into the EU. This article concludes that until Turkey is able to remedy the ongoing conflict with Cyprus, and addresses several of its human rights concerns, Turkey is unlikely to gain membership into the EU.

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<sup>4</sup> Julianne Smith, Turkey and Europe—A Widening Gap? in *TURKEY'S EVOLVING DYNAMICS: STRATEGIC CHOICES FOR U.S.-TURKEY RELATIONS* 19, 19 (Stephen J. Flanagan & Samuel Brannen, eds., 1999).

<sup>5</sup> *Id.*

<sup>6</sup> Williams, *supra*, note 2, at 2.

<sup>7</sup> Smith, *supra* note 4.

<sup>8</sup> Constantinos Koliopoulos, The Strategic Implications of Turkey's EU Membership in *TURKEY-EUROPEAN UNION RELATIONS: DILEMMAS, OPPORTUNITIES, AND CONSTRAINTS* 93, 107 (Meltem Müftüler-Bac, Yannis A. Stivachtis eds., 2008).

<sup>9</sup> Williams, *supra* note 2, at 5.

## II. HISTORY

Turkey made its first bid to join the European Economic Community ("EEC") in July 1959,<sup>10</sup> in order to gain the economic advantages of belonging to a trade bloc.<sup>11</sup> In response, the EEC agreed to forge a loose association between itself and Turkey.<sup>12</sup> The resulting negotiations produced the Agreement Creating An Association Between The Republic of Turkey and the EEC ("Ankara Agreement"), which came into effect in 1964.<sup>13</sup> The long-term goal of this agreement was full integration of Turkey into the EEC.<sup>14</sup> The Ankara Agreement stated that Turkey was to create a customs union,<sup>15</sup> and in return the EEC was to offer its financial assistance.<sup>16</sup> The Ankara Agreement did not allow Turkey to be a part of the decision-making process in the EEC.<sup>17</sup>

The Additional Protocol, another agreement between the EEC and Turkey passed in 1970,<sup>18</sup> provided that the EEC would abolish tariffs and quantitative barriers with Turkey, and that Turkey would do the same on a timetable of 12 to 22 years.<sup>19</sup> The Additional Protocol would have also aligned Turkish economic legislation with the policies of the EEC,<sup>20</sup> however, it was never fully implemented.<sup>21</sup>

In 1980, Turkey began experiencing economic difficulties and underwent a military coup.<sup>22</sup> As a result of the civil rights violations

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<sup>10</sup> *Enlargement—Turkey*, EUROPEAN COMMISSION (June 11, 2013), [http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index\\_en.htm](http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm).

<sup>11</sup> *Q & A: Turkey and the EU*, BBC NEWS (Oct. 6, 2004), <http://news.bbc.co.uk/2/hi/europe/3682828.stm>.

<sup>12</sup> *History of Turkey-EU Relations*, TURKEY: MINISTRY OF FOREIGN AFFAIRS (Mar. 6, 2007), <http://www.abgs.gov.tr/index.php?p=111&l=2>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Sarah Fox Ozkan, *Turkish-EU Relations and the Prospects for Turkish Accession*, 13 LBJ J. PUB. AFF. 43, 45 (2001).

<sup>20</sup> *History of Turkey-EU Relations*, *supra* note 12.

<sup>21</sup> *Id.*

<sup>22</sup> Dinesh Banani, *Reforming History: Turkey's Legal Regime and its Potential Accession to the European Union*, 26 B.C. INT'L & COMP. L. REV. 113, 116 (2003).

associated with this coup, the EEC froze relations with Turkey.<sup>23</sup> In response, Turkey both loosened restraints on free trade<sup>24</sup> and allowed multiparty elections.<sup>25</sup> Relations between Turkey and the EEC were restored by 1983.<sup>26</sup>

Turkey first applied for formal membership in the EEC in 1987.<sup>27</sup> The Commission issued an opinion in 1989 saying that Turkey was eligible for full membership in the EEC, but that the current political climate was still unripe for Turkey's admission.<sup>28</sup> Soon afterward, the European Parliament issued a statement of its intention to slow relations with Turkey due to the Turkish government's human rights violations and Turkey's ongoing political struggle with Greece and Cyprus.<sup>29</sup> The European Parliament then passed a resolution to block any funding from the EU to Turkey, unless the funding fostered democracy, human rights and civil society.<sup>30</sup>

The EU issued a statement saying that Turkey's customs union was still non-compliant with many of the EU's recommendations<sup>31</sup> though Turkey eventually completed the process of compliance.<sup>32</sup> Another meeting ensued and the EU made a declaration on financial cooperation with Turkey.<sup>33</sup> This declaration also provided Turkey with 2.2 billion ECU (European Currency Units) to relieve some of the hardship associated with opening up Turkey to additional competition from other members of the EU, as well as improving Turkey's infrastructure.<sup>34</sup> In 2004, constitutional amendments and penal reform led the EEC to conclude that the EU should open accession negotiations

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<sup>23</sup> *History of Turkey-EU Relations*, *supra* note 12.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Banani, *supra* note 22, at 117.

<sup>30</sup> *Id.*

<sup>31</sup> *History of Turkey-EU Relations*, *supra* note 12.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

to Turkey.<sup>35</sup> That same year, the Brussels European Council followed the EEC's recommendations.<sup>36</sup>

In 2005, the EU began a screening process to determine the degree to which Turkey still had to comply with any additional remaining requirements for full membership.<sup>37</sup> Currently, there are thirteen areas (or "chapters") that are still open for negotiation: free movement of capital, company law, intellectual property law, information society and media, food safety, veterinary & phytosanitary policy, taxation, statistics, enterprise & industrial policy, trans-European networks, environment, consumer & health protection and financial control.<sup>38</sup> Only one area remains provisionally closed to negotiation: science and research.<sup>39</sup>

In 2006, however, the EU expressed concern over the free movement of goods in the country.<sup>40</sup> Turkey had agreed to the free movement of goods in the Additional Protocol.<sup>41</sup> Shortly thereafter, the EU stalled negotiations with Turkey on eight chapters due to Turkey's hostilities with Cyprus.<sup>42</sup> Three chapters may be opened for negotiation when Turkey fulfills only technical criteria.<sup>43</sup>

In February 2013, Turkey's chief negotiator stated that it was time for the EU to finally make a decision as to whether Turkey should be allowed full membership.<sup>44</sup> Several policy issues remain in limbo because of Turkey's refusal to recognize the sovereignty of Cyprus, a member of the EU.<sup>45</sup> Turkey has recently expressed its continuing interest in joining the EU although it has cited its citizens' skepticism of

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Detailed Country Information-Turkey*, EUROPEAN COMMISSION (Sept. 5, 2014, 7:02 PM); EUROPEAN COMMISSION, *supra* note 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Williams, *supra* note 2, at 1.

<sup>42</sup> *Id.*

<sup>43</sup> *Accession Negotiations-What is the current status?*, DELEGATION OF THE EUROPEAN UNION TO TURKEY (September 15, 2014, 6:17 PM), <http://www.avrupa.info.tr/en/turkey-the-eu/accession-negotiations/what-is-the-current-status.html>.

<sup>44</sup> Mohammad Abbas, *Frustrated Turkey still wants EU entry, but maybe not euro*, REUTERS (Feb. 13, 2013), <http://www.reuters.com/article/2013/02/13/us-britain-turkey-eu-idUSBRE91C1E520130213>.

<sup>45</sup> *Id.*

the status of the Euro as a potential reason for not adopting it as currency.<sup>46</sup> Whether Turkey and the European Union will be able to come to an agreement regarding Turkey's relations with Cyprus and Turkey's human rights violations remains to be seen.

### III. KEY INTERNATIONAL PLAYERS TO TURKISH ACCESSION

Turkey's largest opposition to full membership in the EU has arguably come from the Republic of Cyprus, France and Germany.<sup>47</sup> Cyprus' opposition to Turkey becoming a member of the EU stems from Turkey's refusal to recognize Cyprus as a country.<sup>48</sup> Former Prime Minister of France, Nicolas Sarkozy, vehemently opposed the admission of Turkey to the EU, publically saying, "I want to say that Europe must give itself borders, that not all countries have a vocation to become members of Europe, beginning with Turkey, which has no place inside the European Union," and "[e]nlarging Europe with no limit risks destroying European political union, and that I do not accept."<sup>49</sup> Recently, however, France has come out in support of continuing negotiation for Turkey entering into the EU.<sup>50</sup>

#### A. Germany-Turkey Relations

Angela Merkel, the current Chancellor of Germany, has advocated a "vaguely defined partnership" between the EU and Turkey, though Chancellor Merkel and many conservative voters in Germany do not want Turkey to gain full membership.<sup>51</sup> The current Turkish prime minister responded that he would reject such an offer and would accept nothing less than full membership.<sup>52</sup> Merkel has

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Mark Mardell, *Turkey's EU membership bid stalls*, BBC NEWS (Dec. 11, 2006), <http://news.bbc.co.uk/2/hi/europe/6170749.stm>.

<sup>49</sup> Lucia Kubosova, *Sarkozy launches presidential bid with anti-Turkey stance*, EUOBSERVER (Jan. 15, 2007), <http://euobserver.com/political/23251>.

<sup>50</sup> Valentina Pop, *France ready to unblock EU-Turkey talks*, EUOBSERVER (Feb. 13, 2013), <http://euobserver.com/enlargement/119044>.

<sup>51</sup> *Id.*; Turkey Ready to Step up European Union Entry Talks, KYIVPOST (June 30, 2009, 7:59 PM), <https://www.kyivpost.com/content/world/turkey-ready-to-step-up-european-union-entry-talks-44354.html>.

<sup>52</sup> *Id.*

previously expressed skepticism as to the idea that the EU should be expanded.<sup>53</sup>

The primary point of contention between the two countries seems to be the fact that Turkey will not open its ports to ships from Cyprus.<sup>54</sup> In response to Merkel's demand that Turkey cede control of its ports, Turkey demanded that the EU lift its embargo on the controlled part of Cyprus in return.<sup>55</sup> These problems have been compounded by Merkel's recent public criticism that the Turkish reaction to protests of Turkish Prime Minister Recep Tayyip Erdoğan were "too harsh."<sup>56</sup> Apparently, Germany has blocked any further accession talks in the EU, although now the parties have reached an apparent compromise: negotiations will resume when Turkey issues a progress report in October.<sup>57</sup>

Though Germany refers to Cyprus and the response to protests as being the reasons why it favors less than full accession for Turkey, other factors which have not been discussed publicly may also have an effect. For example, free labor mobility could mean that the Turkish immigrant population in Germany may increase from 2 to 3.5 million in thirty years.<sup>58</sup> Today, Germany has a Turkish population of about 2.1 million.<sup>59</sup> The higher income available in Germany has already caused a great deal of Turkish immigration into Germany since the 1960's, and the free mobility of labor might mean that Turkish immigration into

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<sup>53</sup> Mark Beunderman, *Merkel warns Turkey on 'very, very serious situation,'* EUOBSERVER (Nov. 6, 2006), <http://euobserver.com/enlargement/22793>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Damien McElroy, *Angela Merkel hits out at 'harsh' response to Turkey protests,* TELEGRAPH, (June 17, 2013, 6:38 PM), <http://www.telegraph.co.uk/news/worldnews/europe/turkey/10125814/Angela-Merkel-hits-out-at-harsh-response-to-Turkey-protests.html>.

<sup>57</sup> Laurence Norman, *Germany Said to Block EU-Turkey Accession Talks,* WALL ST. J., (June 20, 2013), <http://online.wsj.com/news/articles/SB10001424127887323393804578557852712523268>; *Turkish Talks to Continue Despite Berlin Tiff,* SPIEGEL ONLINE (June 25, 2013, 1:32 PM), <http://www.spiegel.de/international/europe/turkey-and-eu-reach-compromise-on-accession-talks-a-907723.html>.

<sup>58</sup> Harry Flam, *Turkey and the EU: Politics and Economics of Accession*, 50 CESinfo Economic Studies 171–210, 186 (2004).

<sup>59</sup> *Id.* at 179.



Germany will only increase.<sup>60</sup> Some Germans feel that an increase in Turkish immigration could mean fewer available jobs.<sup>61</sup> Because German employers would have a greater base of workers from which to choose, some have projected that a greater influx of Turkish immigrants into Germany could mean reduced wages.<sup>62</sup>

### B. *Cyprus-Turkey Relations*

Cyprus has been another major barrier to Turkey's accession to the European Union.<sup>63</sup> Turkey still flatly refuses to recognize the Republic of Cyprus as an independent country.<sup>64</sup> Part of the present dispute over Cyprus stems from the historical animosity between Greece and Turkey.<sup>65</sup> Greece and Turkey were involved in several wars between the years of 1892 to 1922.<sup>66</sup> The Greeks have historically been leery of trusting the Turks because of Turkish behavior during Ottoman rule, and the Turks mistrust the Greeks due to the Greeks' former dream of uniting all former Greek territories.<sup>67</sup>

Since 1974, the Turkish and Greek citizens of Cyprus have been divided.<sup>68</sup> In that year, the island was partitioned, with the northern third of the island inhabited by the Turkish Cypriots and the southern two-thirds inhabited by the Greek Cypriots.<sup>69</sup> The Buffer Zone between these two areas is patrolled by United Nations troops.<sup>70</sup> The UN drew up the dividing line after a ceasefire between the sections of the island in 1963.<sup>71</sup>

In 1983, the Turkish portion of Cyprus declared its independence and renamed itself the Turkish Republic of Northern

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<sup>60</sup> *Id.* at 180.

<sup>61</sup> *Id.* at 179.

<sup>62</sup> *Id.*

<sup>63</sup> *Cyprus Profile*, BBC NEWS (Mar. 11, 2014), <http://www.bbc.com/news/world-europe-17217956>.

<sup>64</sup> *Id.*

<sup>65</sup> George Kaloudis, *Cyprus: The Enduring Conflict*, 16 INT'L J. ON WORLD PEACE 3–18 (1999).

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.*

<sup>68</sup> *Cyprus Profile*, *supra* note 63.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

Cyprus (TRNC).<sup>72</sup> The independence of the TRNC is only recognized by Turkey.<sup>73</sup> Although Cyprus has been a member of the UN since 2002, it continues to be divided.<sup>74</sup> In 2003, the Turkish and Greek portions of Cyprus failed to agree to the UN's plan of peace talks.<sup>75</sup> Hopes of reunification of the island arose in 2008, with the ascension to power of Mehmet Ali Talat, a left wing Turkish Cypriot leader.<sup>76</sup> However, these hopes were dashed when Turkish nationalists once again gained power shortly thereafter.<sup>77</sup>

As a result of the failure of Greece, Turkey, and Cyprus to agree on what belongs to whom, Turkey has incurred a significant cost.<sup>78</sup> In the past, Turkey has lost its EU aid as a result of the conflict.<sup>79</sup> Now, half of Turkish negotiations with the EU have arguably stalled.<sup>80</sup>

In addition to the current dispute, territorial conflicts are ongoing between these parties.<sup>81</sup> In the Aegean, Turkish officials apparently are aware that the Greeks have a much stronger claim to the area.<sup>82</sup> Similarly, in the Mediterranean, Greek officials apparently know that Turkey has a much stronger claim.<sup>83</sup> However, the major point of contention appears to be Cyprus, especially since prior to the Cyprus conflict Greece and Turkey had politically and commercially normalized relations.<sup>84</sup>

In practice, Greek Cypriots have represented Cyprus in the EU.<sup>85</sup> However, the recent economic recession has increased hopes that

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Cyprus Profile*, *supra* note 63.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Hugh Pope, *The Cost of Frozen Conflict for Cyprus, Greece and Turkey*, INT'L CRISIS GROUP (2013), <http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/op-eds/Hugh-Pope-The-cost-of-frozen-conflict-for-Cyprus-Greece-and-Turkey.aspx>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> George Kyris, *Cyprus's Economic Woes Could Help Resolve the Island's Dispute*, THE GUARDIAN (Mar. 28, 2013), available at <http://www.theguardian.com/commentisfree/2013/mar/28/cyprus-economic-woe-resolve-conflict>.

Cyprus and Turkey could finally set aside their differences.<sup>86</sup> Cyprus has sought a bailout from the EU, and decided to commence gas exploration in the area in an attempt to reboot its economy.<sup>87</sup> Turkey has stated that any gas exploration in the area should be discussed with the Greek and Turkish Cypriots.<sup>88</sup> Although Turkey recently called for fresh talks for the negotiation of the Cyprus issue, any resolution in the immediate future is still unclear and progress in the matter is sure to move slowly.<sup>89</sup>

If Turkey wishes to resolve this issue, any discussion should probably involve the Turkish Cypriots. One potential solution is to simply give the Turkish Cypriots a larger voice in Cyprus's foreign relations. Should the Turkish Cypriots finally feel included in the Cypriot political discussion, they would feel Turkey's involvement would no longer be necessary. Another potential solution might be a confederacy-type government in Cyprus, in which Turkish Cypriots maintain a distinct political identity but would still have to comply with the laws of Cyprus's federal government. This compromise would allow the Turkish Cypriots to be relevant in political discussions, while at the same time form part of a united Cyprus. It is unlikely Turkey and the Greek Cypriots would see either of these alternatives as within their political interests, but both governments would have to make concessions in order to finally resolve this quagmire. Until then, the prospect of Turkish accession to the EU seems unlikely.

### C. *United States-Turkey Relations*

The United States does not factor directly into the accession of Turkey into the European Union. However, the administrations of George W. Bush and Barack Obama have both supported the enlargement of the EU, and Turkey in particular has always been strategically important.<sup>90</sup> Turkey's accession into the EU could possibly aid foreign relations and economic opportunities for the United States

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Vincent Morelli, CONG. RESEARCH SERV., RS22517, *European Union Enlargement: A Status Report on Turkey's Accession Negotiations* 16–17 (2013).

in the region.<sup>91</sup> President Barack Obama has recently reaffirmed this position to the Arab world.<sup>92</sup> In 2009, in his remarks before the Turkish Parliament, President Obama said:

Turkey has been a resolute ally and a responsible partner in transatlantic and European institutions. Turkey is bound to Europe by more than the bridges over the Bosphorous. Centuries of shared history, culture, and commerce bring you together. Europe gains by the diversity of ethnicity, tradition and faith -- it is not diminished by it. And Turkish membership would broaden and strengthen Europe's foundation once more.<sup>93</sup>

The United States believes that Turkey's membership in NATO indicates it should be able to cooperate with other countries in the EU, since many countries in NATO are also in the EU.<sup>94</sup> However, the United States has been disappointed since it has not been able to use its influence successfully in order to expedite Turkey's accession.<sup>95</sup>

Perhaps one of the biggest reasons the United States has been so open about its support towards Turkey's accession into the EU is its strategic placement in the Middle East.<sup>96</sup> First, Turkey shares its borders with Iraq, Iran, and Syria, and therefore offers an ideal location for airbases in the event of international conflict.<sup>97</sup> Second, Turkey's alliance with Israel proves favorable since Israel is a key ally to the United States.<sup>98</sup> The United States also sees Turkey as a secular democratic model for the surrounding region.<sup>99</sup> Finally, Turkey gives NATO access to a crucial region in the world, which would otherwise

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<sup>91</sup> *Id.* at 17.

<sup>92</sup> PRESS RELEASE, The White House, *Remarks by President Obama to the Turkish Parliament* (Apr. 6, 2009) available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Obama-To-The-Turkish-Parliament](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Obama-To-The-Turkish-Parliament).

<sup>93</sup> *Id.*

<sup>94</sup> Morelli, *supra* note 90, at 17.

<sup>95</sup> *Id.* at 16–17.

<sup>96</sup> Kuniholm, *supra* note 3.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 35.

be out of reach.<sup>100</sup> Should Turkey join the EU, it would no doubt become even more westernized, and thereby give the United States an even stronger ally in the Middle East.<sup>101</sup>

The United States and the EU have very different goals when considering the accession of Turkey.<sup>102</sup> The United States believes that Turkey could be of immense importance on a global scale for stability.<sup>103</sup> The EU, by contrast, is more concerned with maintaining its identity.<sup>104</sup> (This is compounded by the EU's distaste for Turkey's international conflicts, such as with Cyprus, and Turkey's past human rights abuses.)<sup>105</sup>

The United States' support for Turkey has caused some displeasure among members of the EU because the United States has not directly participated in the EU's history and purportedly does not fully grasp the importance of allowing Turkey to become a member.<sup>106</sup> Some members also feel that the United States takes too narrow of a view on the issue, and that couching Turkey's accession in terms of secularism could mean that anything short of full membership would be a rejection of Islam entirely by the West.<sup>107</sup>

The United States has acknowledged that scaling back its rhetoric in the matter has eased tensions with countries such as France, Germany and Austria.<sup>108</sup> Some advocates of Turkey's EU membership believe that the United States should use its influence in more constructive ways, such as urging Turkey to comply with provisions in the Additional Protocol.<sup>109</sup> Some members of the United States Congress continue to offer vocal support for Turkish accession, although this support will likely have little effect on the outcome of any negotiations between Turkey and the EU.<sup>110</sup>

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 26.

<sup>102</sup> *Id.* at 35.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 28.

<sup>106</sup> Morelli, *supra* note 90, at 16.

<sup>107</sup> *Id.* at 17.

<sup>108</sup> *Id.* at 3.

<sup>109</sup> *Id.* at 17.

<sup>110</sup> *Id.*

In sum, if the United States wishes to advocate on behalf of Turkish accession, perhaps it will be most effective if it does so from the sidelines, thereby preserving relations with EU member states.

#### IV. TURKEY'S CONSTITUTION AND DEMOCRATIC STATUS

The Economist rated Turkey as a “hybrid regime” in its last assessment of the state of global democracy.<sup>111</sup> The Economist considered many factors in their assessment of democracies, including: whether national elections are free and fair; the security of voters; the influence of foreign powers on government; and the capability of the civil servants to implement policies.<sup>112</sup> Responses were grouped in five categories: (1) electoral process and pluralism; (2) civil liberties; (3) functioning of government; (4) political participation; and (5) political culture.<sup>113</sup> Based on this assessment, Turkey is still in a better position democratically than many of its neighboring counties in the Middle East; however, it is in a worse position than many of its neighboring countries in Europe.<sup>114</sup>

Turkey's geological position is evident from the conflicting values expressed in its constitution. Although Turkey's constitution contains many “fundamental rights and liberties,” the Turkish constitution also includes significant qualifying language for these liberties. The government in the past has exploited this language to violate human rights.<sup>115</sup>

In 2010, Turkish voters passed important constitutional amendments that were aimed at bringing Turkey closer to compliance with the EU's standards.<sup>116</sup> The original Turkish constitution was drawn by a military junta that had seized power in the 1980's.<sup>117</sup> The amended constitution provides for: (1) the ability of civilian courts to

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<sup>111</sup> *Democracy index 2012: Democracy at a standstill*, Economist Intelligence Unit, at 6 (March 14, 2013), available at [https://portoncv.gov.cv/dhub/porton.por\\_global.open\\_file?p\\_doc\\_id=1034](https://portoncv.gov.cv/dhub/porton.por_global.open_file?p_doc_id=1034).

<sup>112</sup> *Id.* at 26–27.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 10–15.

<sup>115</sup> Banani, *supra* note 22, at 120.

<sup>116</sup> Jonathan Head, *Turkey backs constitutional change*, BBC NEWS (Sept. 12, 2010), available at <http://www.bbc.com/news/world-europe-11278602>.

<sup>117</sup> *Id.*

try military personnel for crimes against the state; (2) more protection against discrimination for women, children, the elderly and the disabled; and (3) greater collective bargaining rights.<sup>118</sup> However, some have called for additional constitutional reforms, particularly in the area of civil rights.<sup>119</sup> In 2013, Freedom House declared that “civil liberties [are] at risk in Turkey,” citing specifically the fact that Turkey has been jailing journalists that have spoken out against the government.<sup>120</sup>

In theory, Turkey is a liberal democracy. The Preamble to Turkey’s constitution provides that the nation will not “deviate from liberal democracy and the legal system instituted according to its requirement.”<sup>121</sup> Article 2 of the Turkish Constitution embodies this, stating:

The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.<sup>122</sup>

Furthermore, in direct contrast to many other regimes in the Middle East, Turkey’s Preamble to its Constitution dedicates the country to secular principles. The Preamble clearly elevates the Turkish identity over ethnic and religious divisions:

The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk

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<sup>118</sup> *Id.*

<sup>119</sup> Aslan Amani, *Turkey’s growing constitutional conundrum*, Open Democracy (Mar. 22, 2013), available at <https://www.opendemocracy.net/aslan-amani/turkeys-growing-constitutional-conundrum>.

<sup>120</sup> Arch Puddington, *Freedom in the World 2013: Democratic Breakthroughs in the Balance*, Freedom House, at 3 (Sept. 5, 2013), available at <http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf>.

<sup>121</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] pmb1.

<sup>122</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 2.

and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics; the acknowledgment that it is the birthright of every Turkish citizen to lead an honorable life and to develop his or her material and spiritual assets under the aegis of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution in conformity with the requirements of equality and social justice.<sup>123</sup>

Article 5 of the Turkish Constitution embodies this principle by stating, “[t]he fundamental aims and duties of the state are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy . . .”

Turkey’s secularism is declared in Article 24 of its Constitution, which claims “[e]veryone has the right to freedom of conscience, religious belief and conviction.”<sup>124</sup>

In the past, Article 13 has served as the basis for the government to restrict the liberty of Turkish citizens in a way that would not be tolerated in most consolidated democracies. However, since the 2001 amendments to the Turkish Constitution, Article 13 has been reworded to serve as a guarantee of liberty, rather than a limitation.<sup>125</sup> Article 13 provides that “[f]undamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence.”<sup>126</sup> The only restrictions applied are those mentioned elsewhere in the Constitution, which is reflected in the following language: “[t]hese restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.”<sup>127</sup>

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<sup>123</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] pmbl.

<sup>124</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 24.

<sup>125</sup> Helen Keller & Alec Stone Sweet, *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, at 494–513 (Oxford Univ. Press 2008).

<sup>126</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 13.

<sup>127</sup> *Id.*



A. *Torture and Ill-Treatment of Citizens by Police and Security Forces*

Turkey's constitution does not specifically prohibit cruel and unusual punishment, although Article 38 provides several different protections regarding the rights of the accused.<sup>128</sup> Article 38 provides that "[t]he Administration shall not impose any sanction resulting in restriction of personal liberty."<sup>129</sup> A similar provision in Article 38 states that "[p]enalties, and security measures in lieu of penalties, shall be prescribed only by law."<sup>130</sup> Additionally, Article 38 guarantees that "[f]indings obtained through illegal methods shall not be considered evidence."<sup>131</sup>

There have been several reports that as recently as 2009, the Turkish court system has accepted evidence received through torture.<sup>132</sup> Accusing the government of being too lax in enforcing its zero tolerance policy for torture, Amnesty International has stated that "[n]othing short of a fully-implemented policy of 'zero tolerance for impunity' will end the spectre of torture, other ill-treatment, killings and enforced disappearances which blighted Turkey's human rights record until the very recent past."<sup>133</sup> Although the current government has enacted laws to prevent torture, Freedom from Torture, a medical foundation for the care of victims of torture, reported 59 victims from Turkey in 2012-2013.<sup>134</sup> Turkey has failed to prosecute purported torturers and it has been suggested that torture in Turkey is severely under-reported because of potential retaliation by the government.<sup>135</sup>

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<sup>128</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 38.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Freedom in the World 2009—Turkey*, Freedom House (July 16, 2009), <http://www.refworld.org/docid/4a6452771e.html>.

<sup>133</sup> *Turkey: The Entrenched Culture of Impunity Must End*, Amnesty International, at 4 (July 5, 2007), 44/008/2007, available at <http://www.refworld.org/docid/468d16862.html> [accessed Sept. 6, 2013].

<sup>134</sup> *Annual Review 2012/13*, Freedom from Torture, at 3 (2013), available at [http://www.freedomfromtorture.org/sites/default/files/documents/FFT\\_Annual\\_Rev\\_2013\\_WEB.pdf](http://www.freedomfromtorture.org/sites/default/files/documents/FFT_Annual_Rev_2013_WEB.pdf).

<sup>135</sup> *World Report 2013—Turkey*, Human Rights Watch (Jan. 31, 2013), <http://www.refworld.org/docid/510fb4cbc.html>.

Police violence against protesters continues to be a serious problem.<sup>136</sup> In 2012, approximately 4 people were killed during human rights demonstrations against the government.<sup>137</sup> During clashes with the Kurdistan Worker's Party ("PKK"),<sup>138</sup> a Kurdish terrorist organization, 17 civilians were killed and 65 were injured.<sup>139</sup> Additionally, in 2011, 34 civilians were killed in an airstrike against the PKK.<sup>140</sup> Furthermore, the police often investigate individuals who report such violence.<sup>141</sup>

### B. Freedom of Expression

Article 26 of the Turkish Constitution guarantees freedom of expression in Turkey. Article 26 states that "[e]veryone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively."<sup>142</sup> However, the rest of article broadly expands the government's ability to curtail expression. It continues:

The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders,

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<sup>136</sup> *Id.*

<sup>137</sup> *Country Reports on Human Rights Practices for 2012—Turkey*, U.S. DEPT. OF STATE (April 19, 2013), available at <http://www.state.gov/documents/organization/204558.pdf>.

<sup>138</sup> The PKK is composed of Kurdish militants seeking to obtain autonomy from the Turkish government. Obviously, as the PKK is composed of militants, most of the PKK's activities do not fall within the realm of political speech. However, the Turkish government's struggles with the PKK have resulted in the deaths of the Kurdish protesters who were not members of PKK in the past. See *PKK Ready to Swap Arms for Autonomy*, Press TV (Sept. 13, 2010) available at <http://edition.presstv.ir/detail/142279.html>. See also *Turkish Police Kill Young Kurd Protestor*, PressTV (Dec. 6, 2014) available at <http://edition.presstv.ir/detail/389071.html>.

<sup>139</sup> *Id.*

<sup>140</sup> *World Report 2013—Turkey*, Human Rights Watch (Jan. 31, 2013), <http://www.refworld.org/docid/510fb4cbc.html>.

<sup>141</sup> *Id.*

<sup>142</sup> *Türkiye Cumhuriyeti Anayasası* [Const. of the Republic of Turkey] art. 26.

withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.<sup>143</sup>

Article 27 guarantees freedom in disseminating science in the arts.<sup>144</sup> Article 28 guarantees freedom of the press, stating “[t]he press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.”<sup>145</sup> However, the Article reserves the right of the state to prevent the publishing of articles that compromise its national security.<sup>146</sup>

In practice, however, freedom of expression has not received adequate protection under the Turkish Constitution. Turkish law allows journals to be prosecuted for discussing such subjects as the government’s conflict with Cyprus and governmental abuses of power,<sup>147</sup> and Turkish journalists have been arrested for such crimes as insulting the armed forces and denigrating Turkishness.<sup>148</sup> Cartoonists have recently complained about being subjected to censorship over their portrayals of the President and the Prime Minister.<sup>149</sup> Though a reform package passed in June 2012 has reduced the potential length of sentences for imprisoned journalists, these laws fail to live up to the standards established by the EU.<sup>150</sup> As of 2013, Turkey had more journalists jailed than any other country in the world.<sup>151</sup> Even with reduced sentences, Turkish journalists still engage in wide self-censorship for fear of punitive measures.<sup>152</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 27.

<sup>145</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 28.

<sup>146</sup> *Id.*

<sup>147</sup> *Freedom in the World 2009—Turkey*, *supra* note 132.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Freedom in the World 2012—Turkey*, FREEDOM HOUSE (July 16, 2012), <http://www.freedomhouse.org/report/freedom-world/2012/turkey>.

<sup>151</sup> *2013 prison census: 211 journalists jailed worldwide*, Committee to Protect Journalists, (Dec. 1, 2013) available at <http://cpj.org/imprisoned/2013.php>.

<sup>152</sup> *Freedom in the World 2009—Turkey*, *supra* note 132.

Nearly all of the major media outlets are owned by corporations.<sup>153</sup> These corporations have considerable influence over the content published in the media.<sup>154</sup> Many have ties to political parties,<sup>155</sup> and as a result news outlets engage in self-censorship in order to protect these interests.<sup>156</sup> This is particularly true in the case of Kurdish language news outlets.<sup>157</sup> Regulation of Kurdish media has improved through recent legislation, although Kurds are still more susceptible to regulation by the government than other news sources.<sup>158</sup>

The Turkish government similarly curtails free speech on the Internet.<sup>159</sup> There has been a marked uptick of prosecutions of people who share content through social networking sites.<sup>160</sup> In 2011, one man was sentenced to prison for insulting the current Turkish President on the Internet,<sup>161</sup> and in 2009 the Turkish government blocked access to YouTube and other websites.<sup>162</sup> In 2011, the government instituted a new Internet filtering system, intended to allow greater freedom.<sup>163</sup> However, this system apparently still blocks-out innocuous websites, such as underwear manufacturers.<sup>164</sup> Similarly, academic freedom is subject to self-censorship.<sup>165</sup> It is estimated that about 3,000 students are imprisoned after calling for higher education.<sup>166</sup>

In many cases, Turkish citizens cannot speak-out against the government without fear of punitive action.<sup>167</sup> In March 2012, Ahmet Şık and Nedim Şener, two journalists who were investigating human rights abuses by the Turkish government, were arrested and charged

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Freedom in the World 2009—Turkey*, *supra* note 132.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Freedom in the World 2012—Turkey*, *supra* note 150.

<sup>162</sup> *Freedom in the World 2009—Turkey*, *supra* note 132.

<sup>163</sup> *Freedom in the World 2012—Turkey*, *supra* note 150.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Freedom in the World—Turkey*, FREEDOM HOUSE (2013), <https://freedomhouse.org/report/freedom-world/2013/turkey#.VIKIIMkR5co>.

<sup>167</sup> *Annual Report 2012—Turkey*, AMNESTY INTERNATIONAL (May 13, 2011), available at <http://www.amnesty.org/en/region/turkey/report-2012>.

with membership in a terrorist organization.<sup>168</sup> Their arrests were part of a criminal investigation of a group that was planning to overthrow the government.<sup>169</sup> The group's literature is projected to be the main source of evidence used at trial.<sup>170</sup> The Turkish government is apparently continuing to pursue charges against the men.<sup>171</sup>

### C. *Conscientious Objection*

There is no constitutional provision for conscientious objection in Turkey. Article 72, in fact, seems to directly contradict it. It states, "[n]ational service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service shall be regulated by law."<sup>172</sup>

In recent years there have been no reforms in Turkey to laws regarding conscientious objection.<sup>173</sup> As of yet, those who have publicly supported the right to conscientious objection have faced criminal prosecution.<sup>174</sup> As conscientious objection receives no constitutional protection, and the government does not appear to be interested in making significant reforms in this area, conscientious objection is likely to remain a human rights problem in Turkey.<sup>175</sup>

### D. *Freedom of Assembly*

Freedom of assembly is addressed in Article 34 of the Constitution.<sup>176</sup> It provides that "[e]veryone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission."<sup>177</sup> This section, again, has qualifying language. The

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Fiachra Gibbons, *The Turkish enlightenment languishes, like the journalists in its prisons*, THE GUARDIAN (Mar. 13, 2012), <http://www.theguardian.com/commentisfree/libertycentral/2012/mar/13/turkey-enlightenment-journalists-prisons>.

<sup>172</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 72.

<sup>173</sup> AMNESTY INTERNATIONAL, *supra* note 167.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *See* Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 34.

<sup>177</sup> *Id.*

freedom of assembly “shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others.”<sup>178</sup>

Despite the constitutional protection for freedom of assembly, many Turkish citizens have been arrested while peacefully protesting the government and violent clashes between protesters and police still occur.<sup>179</sup> Though a law passed in 2004 strengthened the freedom of civil society groups, a law passed in 2005 allows the Turkish government to restrict the freedom of groups that oppose the government’s interests.<sup>180</sup> In 2012, Ankara banned public rallies of political opponents on the grounds that the protests sought to “incite anarchy.”<sup>181</sup> In the same year, there were credible allegations that Turkish police abused demonstrators.<sup>182</sup> Humans Rights Watch has criticized the government’s use of anti-terrorism laws in order to restrict the freedom of assembly.<sup>183</sup> Also in 2012, the Turkish government placed severe restrictions on the celebration of the Kurdish holiday, Newroz.<sup>184</sup> Once riots broke out during the celebrations, police used tear gas and water cannons on the crowd.<sup>185</sup> Two people were killed, 178 wounded, 1,014 detained and 206 arrested during the ordeal.<sup>186</sup> Even members of local human rights groups sometimes face threats or prosecution for their work trying to uphold the fundamental rights of Turkish citizens.<sup>187</sup> In May 2014, police violently dispersed peaceful protesters in Taksim Gezi Park.<sup>188</sup>

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<sup>178</sup> *Id.*

<sup>179</sup> *Freedom in the World—Turkey*, FREEDOM HOUSE, available at <https://freedomhouse.org/report/freedom-world/2010/turkey#.VIOw0LkCM8>.

<sup>180</sup> *Id.*

<sup>181</sup> *Country Reports on Human Rights Practices for 2012—Turkey*, *supra*, note 137.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Freedom in the World 2010—Turkey*, *supra* note 179.

<sup>188</sup> *World Report 2014—Turkey*, HUMAN RIGHTS WATCH available at <http://www.hrw.org/world-report/2014/country-chapters/turkey?page=1> (last visited Oct. 27, 2014).

E. *Freedom of Association*

Freedom of association is addressed in Article 51, which provides that:

“[e]mployees and employers have the right to form labor unions, employers’ associations and higher organizations, without obtaining permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labor relations.”<sup>189</sup>

Again, the government may curtail this right in the interests of national security.<sup>190</sup>

Despite the constitutional protection afforded to the freedom of association, in practice the government maintains several harsh restrictions.<sup>191</sup> Generally, people do not need to notify authorities before organizing an association.<sup>192</sup> However, citizens do need to notify the government if the association plans on conducting international activities or receiving financial support from abroad.<sup>193</sup> Such groups must provide detailed documentation of these activities.<sup>194</sup> Women’s and LGBT rights groups have complained that they were subjected to detailed audits and substantial administrative burdens.<sup>195</sup> Though laws, which protect the formation of labor unions are in place, organized labor remains limited in practice.<sup>196</sup> In 2010, state employees were first granted the right to collective bargaining.<sup>197</sup> Regulations on strikes are burdensome, and the penalties for participating in illegal strikes are

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<sup>189</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 51.

<sup>190</sup> *Id.*

<sup>191</sup> U.S. DEPT. OF STATE, *supra* note 137.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Freedom in the World 2012— Turkey, supra* note 150.

<sup>197</sup> *Id.*

severe.<sup>198</sup> As recently as 2013, citizens of Turkey have been imprisoned for, what is essentially, non-violent political association.<sup>199</sup>

*F. Rights of Minority Groups and Discrimination*

Article 10 of the Turkish Constitution was intended to ensure the protection of minority groups before the law.<sup>200</sup> Article 10 begins, “[a]ll individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations.”<sup>201</sup> A separate provision of Article 10 was intended to protect against discrimination on the basis of sex.<sup>202</sup> It provides that “[m]en and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality.”<sup>203</sup>

Even though Turkey’s amended Constitution professes to give women equal protection under the law, the World Economic Forum ranked Turkey 122 out of 135 in the Gender Gap Index.<sup>204</sup> Only one-third of eligible women are a part of the labor force.<sup>205</sup> Furthermore, women hold just 78 seats in a Parliament consisting of 550 seats.<sup>206</sup> Honor killings still occur, despite stricter laws making them less permissible.<sup>207</sup>

Turkish law prohibits rape, although the government does not actively enforce the prohibition.<sup>208</sup> Rape is largely underreported due to embarrassment and potential societal repercussions.<sup>209</sup> Spousal abuse also remains fairly widespread in Turkey.<sup>210</sup> Like rape, spousal abuse is prohibited under Turkish law even though the government does not

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<sup>198</sup> *Id.*

<sup>199</sup> *World Report 2014—Turkey*, *supra* note 186.

<sup>200</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 10.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Freedom in the World 2012—Turkey*, *supra* note 150.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *2012 Country Reports on Human Rights Practices—Turkey*, *supra* note 137.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*



actively enforce it.<sup>211</sup> On March 20, 2012, the Protection of the Family and Prevention of Violence against Women Law went into place, which added several important protections for women against violence during and after marriage.<sup>212</sup> Despite the law, domestic violence remains a serious problem in Turkey.<sup>213</sup> Honor killings remain a serious issue, and sometimes young women are pressured by their family to commit suicide in order to preserve their family's honor.<sup>214</sup>

Although discrimination against children was constitutionally permissible in Turkey, amendments now prohibit positive discrimination against children.<sup>215</sup> Article 10 of the Turkish Constitution provides that "[m]easures taken for the protection of children, the elderly, disabled people, widows and orphans of martyrs as well as for invalid and veterans would not be considered a violation of the principle of equality."<sup>216</sup>

Turkey has made some major steps towards establishing human rights in recent years.<sup>217</sup> However, whether Turkey will continue on this path by establishing additional constitutional reforms remains to be seen. It is true that even consolidated democracies must establish some limits on the freedoms of its citizens, but many people believe that Turkey must create a more healthy balance between the freedoms of its citizens and state power.<sup>218</sup> Though the human rights situation in Turkey is apparently improving, there are many areas that are plainly a cause for concern. This concern has also been the subject of several key actors dealing directly with Turkish accession. The United States has raised concerns about Turkey's limitations on the freedom of expression.<sup>219</sup> The European Commission, in its 2011 annual report, highlighted flaws in Turkey's criminal justice system, Turkey's restrictions on freedom of expression, and widespread Turkish gender

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *2010 Country Reports on Human Rights Practices—Turkey*, U.S. Dept. of State (Apr. 8, 2011), available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154455.htm>.

<sup>216</sup> Türkiye Cumhuriyeti Anayasası [Const. of the Republic of Turkey] art. 10.

<sup>217</sup> Keller & Sweet, *supra* note 125, at 498.

<sup>218</sup> *Id.* at 499.

<sup>219</sup> *World Report 2012—Turkey*, Human Rights Watch (Jan. 4, 2012), available at <http://www.hrw.org/world-report-2012/world-report-2012-turkey>.

inequality.<sup>220</sup> In 2010, the Council of Europe Commissioner for Human Rights stated that Turkey's limitations on Turkey's freedom of expression were "particularly worrying."<sup>221</sup> Turkey must do a better job at placating the EU's human rights concerns if it wishes to gain full membership.

Turkey's troublesome past in the area of human rights abuses seemingly might justify the EU's wait-and-see approach to Turkish accession. Perhaps other members of the EU are skeptical that Turkey will indeed comply with their human rights standards for a prolonged period of time, and so are putting off allowing Turkey membership in order to see whether they will slide back towards authoritarianism. Human rights will remain a part of the discussion of Turkey's membership in the EU until, at least, the conflict in Cyprus is resolved.

## V. CONCLUSION

When one examines the history of Turkey's plight towards accession into the European Union, it is clear that Turkey has broadly attempted to comply with EU standards. For example, Turkey made a substantial step towards accession when it agreed to establish a customs union. However, Turkey has proved to be uncooperative in the ongoing Cyprus conflict. Until Turkey finally agrees to some sort of resolution with Cyprus, long-term holdouts such as Germany are unlikely to willingly accept Turkey. Even though the United States is a vocal supporter of Turkish accession, the United States has proved to be ineffective in placating the EU's doubts.

Though the Turkish Constitution provides facial support for many crucial liberties to Turkish citizens, the Turkish government is still unable to comply with the EU's standards for admittance. The Turkish government has recently attempted to fix some of its inadequacies in safe-guarding civil liberties, but new laws have not been strong enough (or rather, have not been strictly enforced). It is apparent that the Constitution still provides a great deal of "wiggle room" through which the government can escape compliance. One potential solution is to draft additional constitutional amendments to ensure greater protection of human rights in Turkey.

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<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

Whether Turkey will be granted membership in the EU remains to be seen. Once Turkey is able to resolve its conflict with Cyprus, Turkey has a much higher likelihood of becoming a member, even if it still has several outstanding human rights violations. After all, it is easy to look in from the outside and criticize the situation in Turkey. Almost every country has certain areas that could be improved with respect to human rights. One thing is certain though, if Turkey becomes a member of the EU, the character of international relations will be forever changed.